

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 21-mj-66

SHAWN M. KOSTELNY

Defendant

CRIMINAL COMPLAINT

I, Nicholas Melchiorre, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about August 14, 2020, in the Western District of New York, the defendant, SHAWN M. KOSTELNY, knowingly possessed material that contained an image of child pornography that has been transported using any means and facility of interstate and foreign commerce, including by computer, or that had been produced using materials that had been mailed, shipped, or transported in or affecting interstate and foreign commerce by any means, including by computer.

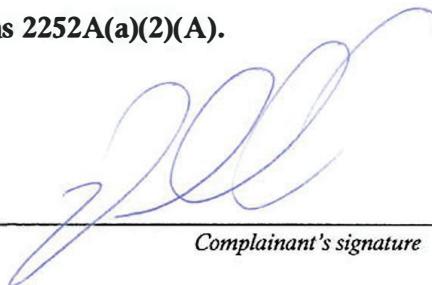
In violation of Title 18, United States Code, Section 2252A(a)(5)(B).

Between on or about June 18, 2020, and on or about June 23, 2020, in the Western District of New York, and elsewhere, the defendant, SHAWN M. KOSTELNY, did knowingly receive, and attempt to receive, child pornography, as defined in Title 18, United States Code, Section 2256(8), that had been shipped and transported using any means and facility of interstate and foreign commerce, and that had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.

All in violation of Title 18, United States Code, Sections 2252A(a)(2)(A).

This Criminal Complaint is based on these facts:

Continued on the attached sheet.



Complainant's signature

NICHOLAS A. MELCHIORRE
SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS

Printed name and title



Judge's signature

HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

Printed name and title

City and State: Buffalo, New York

Sworn to before me and signed telephonically.

Date: June 3, 2021

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

NICHOLAS MELCHIORRE, being duly sworn, deposes and states:

1. I have been employed as a Special Agent ("SA") with Homeland Security Investigations ("HSI"), within the Department of Homeland Security ("DHS"), since 2010. As a Special Agent, I am a federal law enforcement officer within the meaning of Rule 41(a) of the Federal Rules of Criminal Procedure, that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, federal criminal offenses.

2. I have participated in investigations targeting individuals involved in the receipt, distribution and possession of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(2)(A) and Title 18, United States Code, Section 2252A(a)(5)(B). I have received specialized training in the area of child pornography and child exploitation, and I have had the opportunity to observe and review numerous images and videos of child pornography, as defined in Title 18, United States Code, Section 2256. As part of my employment with HSI, I successfully completed the Federal Law Enforcement Training Center's Criminal Investigator Training Program and the Immigration and Customs Enforcement Basic School, both of which included instruction with respect to the application for, and execution of, search and arrest warrants, as well as the application for criminal complaints, and other legal processes.

3. I offer this affidavit in support of a criminal complaint charging Shawn M. KOSTELNY ("KOSTELNY") with violating of Title 18, United States Code, Section 2252A(a)(2)(A) [Receipt of Child Pornography], and 2252A(a)(5)(B) [Possession of Child Pornography].

4. The statements contained in this affidavit are based upon my investigation, information provided to me by other law enforcement personnel, and on my experience and training as a Special Agent of HSI. Because I offer this affidavit for the limited purpose of establishing probable cause in support of a criminal complaint, I have not included every fact known to me concerning this investigation. I have set forth facts that I believe are necessary to establish probable cause to believe that KOSTELNY knowingly violated Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(a)(5)(B).

BACKGROUND OF THE INVESTIGATION

5. Between June 18 and June 23, 2020, you affiant, while engaged in online Peer-to-Peer ("P2P") investigations utilizing investigative P2P software, identified a device utilizing IP address 72.88.92.190 ("SUSPECT DEVICE") making files of interest¹ available for download on the identified network. During the dates in question, I was able to directly connect to the SUSPECT DEVICE and download a total of 1,346 files. The SUSPECT DEVICE was the sole candidate for each download, and, as such, each file was downloaded directly from the SUSPECT DEVICE. I randomly sampled 213 of the 1,346 files of interest downloaded from the SUSPECT DEVICE, and determined based on my training and

¹ Files of interest are files that have previously been viewed and verified by law enforcement officials with training and expertise in child exploitation as being either child pornography or child exploitative material.

experience in child exploitation investigations that 34 files appeared to meet the definition of child pornography as defined under Title 18, United States Code, Section 2256.

6. I identified the internet service provided for IP address 72.88.92.190 between June 19 and June 23, 2020 as MCI Communications Services, Inc. d/b/a Verizon Business. Pursuant to an administrative summons, Verizon identified the subscriber of the IP address and internet service as Shawn KOSTELNY, 43 Miller Ave, Floor 1, Blasdell, New York, 14219.

7. I confirmed KOSTELNY's residence at 43 Miller Ave, Floor 1, Blasdell, New York, 14219 both through New York State Department of Motor Vehicles records as well as well as U.S. Postal Service records.

8. Based in part upon the facts outlined in paragraphs 5 – 7 above, United States Magistrate Judge Jeremiah J. McCarthy, issued a federal search warrant for KOSTELNY's residence located at 43 Miller Ave, Floor 1, Blasdell, New York, 14219 (Case No. 20-MJ-1123 (filed under seal)) on August 13, 2020 to search for evidence related to child pornography offenses. On August 14, 2020, Special Agents of HSI executed the warrant at the residence and seized forty-nine (49) electronic devices from the residence pursuant to the search warrant.

9. Contemporaneous to the execution of the search warrant, HSI SA John Koisch, Jr. and I interviewed KOSTELNY. During the interview, KOSTELNY confirmed

he was the subscriber of the Verizon Internet service at the residence where he has been living for at least 15 years. KOSTELNY confirmed that the upstairs tenant has access to the internet service, but only uses it to watch television. KOSTELNY confirmed using uTorrent² to download child pornography. KOSTELNY told me that investigators would find child pornography on his laptop and/or the external hard drive connected to the laptop. KOSTELNY stated he's been viewing child pornography for approximately 10 years and started with "borderline teenage girls." KOSTELNY stated his preference in child pornography was females between the ages of 8 and 14 but had seen child pornography involving children as young as two years old. KOSTELNY admitted the purpose of viewing child pornography was for his own sexual gratification. Further, KOSTELNY admitted knowing that P2P programs allow him to both download files as well as share/distribute files to other users on the network.

10. HSI Buffalo Computer Forensic Agents (CFAs) conducted forensic examinations of all 49 items seized from the SUBJECT PREMISES on August 14, 2020. In total, 8,018 image files and 686 video files of suspected child pornography as defined in Title 18, United States Code, Section 2256 were located across eight devices. The vast majority of these files depict pre-pubescent Caucasian females. Three of the files are described below:

- a. File - [JulyJailbait] - [jjclubumn7vkhyuw.onion] - LolitaLover - My Slave - season 04 part 04- bdsm pthc 2019.mp4, is a 1:43 video file. This file depicts a fully nude Caucasian female approximately 6-10 years of age with brown/black hair lying on her back on a bed. Her arms are bound, and her legs are spread (can't tell if bound based on camera angle). Her underdeveloped vagina and breasts are exposed to the viewer. Her eyes are covered, and she has a device in her mouth holding it open with a strap around her head. A Caucasian adult male hand is seen placing clothes pins on the female's nipples,

² uTorrent is a BitTorrent client and P2P program. The investigative software used in this case specifically targets BitTorrent clients.

then sticking a finger in her mouth. The hand is then seen going up and down the child's torso from breasts to vagina.

- b. File – **Angelica 5Yr Ass Fuck 61.avi**, is a 4:32:25 video file. This file depicts a fully nude Caucasian female approximately 3-5 years of age. The child has fishnet stockings on and a blind fold. She is seen crying at various times throughout the video. Also in the video are two topless teenage Caucasian females and a fully nude adult Caucasian male. All four children are on a bed. The teenage females are seen touching and caressing the toddler female's underdeveloped breasts and vagina at numerous times throughout the video. The teenage females are seen forcing the toddler female to touch and hold the male's erect penis against her will as she is crying.
- c. File – **51e5db7d72e01aa77dde1c41ccc3e619 – 2012 crying falko girl group man ptsc russian sound woman.mpg**, is a 1:08 video file. This file depicts what appears to be 3-5-year-old Caucasian female in a dress with an adult Caucasian male. In the beginning of the video the male is seen masturbating himself with the child in between his legs, the video then cuts, and the male is seen attempting to insert his erect penis into the female's vagina who is sitting on top of him. After multiple failed attempts, the male inserts his erect penis into the female's anus and has anal sex with her.

11. None of the eight devices on which child pornography was found were manufactured in New York State. Seven of the items were manufactured outside of the United States, and one was manufactured in New Jersey. All eight devices therefore traveled in or affecting interstate or foreign commerce.

12. In addition to the suspected child pornography files located on the eight seized devices, CFAs located 28,625 image files and 3,539 video files of child exploitative material across the same eight seized devices identified in paragraph 10 above.

REQUEST TO SEAL

13. Due to the ongoing nature of this investigation, and the possibility of seriously jeopardizing the effectiveness of the investigation if information were made public, I request

that the search and seizure warrant and this application be sealed until further Order of the Court.

CONCLUSION

14. Based upon the forgoing, I respectfully submit that there is probable cause to believe KOSTELNY violated Title 18, United States Code, Section 2252A(a)(2)(A) [Receipt of Child Pornography], and 2252A(a)(5)(B) [Possession of Child Pornography].



NICHOLAS A. MELCHIORRE
Special Agent
Homeland Security Investigations

Sworn and subscribed telephonically

3rd day of, June 2021.



HONORABLE H. KENNETH SCHROEDER, JR.
United States Magistrate Judge